

REMARKS/ARGUMENTS

In the January 13, 2005 Office Action, Claim 6 was rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Application Pub. No. 2002/0168956 to Murtojarvi (hereinafter referred to as “Murtojarvi”). Claims 1, 2, 7, 11 and 12 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Murtojarvi in view of U.S. Patent Application Pub. No. 2002/0000874 to Thomasson (hereinafter referred to as “Thomasson”). Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Murtojarvi in view of Thomasson, and further in view of U.S. Patent No. 3,579,135 to Anderson. Claims 8-10 were allowed. Finally, Claims 3 and 4 were objected to as being dependent on rejected base claims (i.e. independent Claim 1), but were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant respectfully requests reconsideration of the claims in view of the comments below.

35 U.S.C. § 102(e) Claim Rejection – Claim 6

On pages 2-3 of the Office Action, Claim 6 was rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Murtojarvi. For the following reasons Applicant respectfully disagrees.

M.P.E.P. § 2136.03 directs that:

35 U.S.C. 102(e) is explicitly limited to certain references ‘filed in the United States before the invention thereof by the applicant’ (emphasis in original). Foreign applications’ filing dates that are claimed (via 35 U.S.C. 119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes. (emphasis in original). This includes international filing dates claimed as foreign priority dates under 35 U.S.C. 365(a). *Therefore, the foreign*

priority date of the reference under 35 U.S.C. 119(a)-(d) (f), and 365(a) cannot be used to antedate the application filing date. (emphasis added).

Murtojarvi was filed in the United States on January 30, 2002. It claims priority to Great Britain (GB) Patent Application No. 0102942, via 35 U.S.C. § 119(a), i.e., via the Paris Convention. According to M.P.E.P. § 2136.03 (relevant section quoted above), the foreign priority date of GB Patent Application No. 0102942 (February 6, 2001) cannot be used to antedate the filing date of the present application. For prior art purposes, the 102(e) date of Murtojarvi is the date on which the application was filed *in the United States*. That date, (January 30, 2002) does not antedate the filing date of the present application (December 28, 2001). Accordingly, Murtojarvi is not prior art. The rejection of Claim 6 as allegedly being anticipated by Murtojarvi is, therefore, improper and Applicant requests that it be withdrawn.

35 U.S.C. § 103(a) Claim Rejections – Claims 1, 2, 7, 11 and 12

On pages 3-5 of the Office Action, Claims 1, 2, 7, 11 and 12 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Murtojarvi in view of Thomasson. For the following reasons Applicant respectfully disagrees.

As explained above, Murtojarvi is not prior art. For prior art purposes, the earliest possible date of which Murtojarvi can be applied as a prior art reference is January 30, 2002, which is a date that does not antedate the filing date of the present application. It follows that the § 103(a) rejections of Claims 1, 2, 7, 11 and 12, as allegedly being unpatentable over Murtojarvi in view of Thomasson, are also improper. Applicant requests, therefore, that the § 103(a) rejections of Claims 1, 2, 7, 11 and 12 be withdrawn.

35 U.S.C. § 103(a) Claim Rejection – Claim 5

On page 6 of the Office Action, Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Murtojarvi in view of Thomasson, and further in view of Anderson. For the following reasons Applicant respectfully disagrees.

As explained above, Murtojarvi is not prior art. For prior art purposes, the earliest possible date of which Murtojarvi can be applied as a prior art reference is January 30, 2002, which is a date that does not antedate the filing date of the present application. It follows that the § 103(a) rejection of Claim 5, as allegedly being unpatentable over Murtojarvi in view of Thomasson, is also improper. Applicant requests, therefore, that the § 103(a) rejection of Claim 5 be withdrawn.

Allowed Claims

On page 6 of the Office Action, Claims 8-10 were allowed.

Objected to Claims – Claims 3 and 4

On pages 7-8 of the Office Action, Claims 3 and 4 were objected to for depending on an allowable base claim (Claim 1). As explained above, Claim 1 is allowable over the prior art of record. Accordingly, the objections to Claims 3 and 4 cannot be properly maintained, and Applicant requests that the objections be withdrawn.

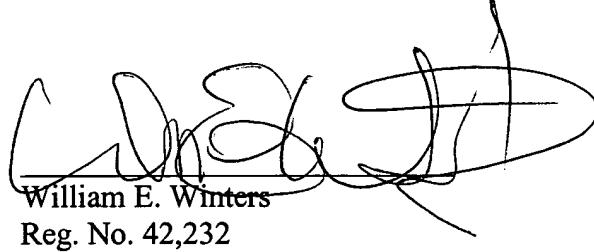
CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 408-282-1857.

Respectfully submitted,

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